

No. 303

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1989 APR 27 PM 4:51
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SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1989



ENROLLED
Committee Substitute for
SENATE BILL NO. 303

(By Senator *Tucker, President, et al*)



PASSED April 8, 1989
In Effect from Passage

ENROLLED

COMMITTEE SUBSTITUTE
FOR

Senate Bill No. 303

(SENATORS TUCKER, MR. PRESIDENT, J. MANCHIN,
JONES AND LOEHR, *original sponsors*)

[Passed April 8, 1989; in effect from passage.]

AN ACT to amend article ten, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section ten-a; to amend and reenact section nine, article twelve of said chapter; to amend article thirteen-d of said chapter by adding thereto a new section, designated section three-b; to amend and reenact sections two, four-b, seven, eight-a, nine, nine-b, nine-c, nine-d, eighteen and thirty-three, article fifteen of said chapter; to further amend said article fifteen by adding thereto a new section, designated section eight-b; to amend and reenact sections three-b, three-c, three-d and twenty-nine, article fifteen-a of said chapter; to further amend said article fifteen-a by adding thereto two new sections, designated sections two-a and six-a; to amend and reenact section twelve, article twenty-one of said chapter; to amend article twenty-four of said chapter by adding thereto a new section, designated section nine-c; and to amend and reenact section three, article one, chapter seventeen of said code, all relating to the Tax Act of 1989; allowing

tax commissioner to be represented by staff attorneys in legal proceedings; limiting the penalty for failure to renew business registration certificates; allowing credit for research and development projects to be applied against corporation net income taxes; amending definitions of terms used in consumers sales tax; making purchaser liable for payment of sales tax due that was not paid to vendor; equalizing sales tax burden on property use in business as between integrated and nonintegrated businesses; providing transition rules; requiring registration of security for payment of sales tax and from nonresident contractors; amending existing exemptions from sales tax and adding several new exemptions; providing methods for claiming exemptions; making issuance of direct pay permits discretionary; combining consumers sales tax and use tax direct pay permit returns; providing rules for filing such returns; dedicating sales tax on aviation fuel to state aeronautical commission for use to obtain federal funds for airports; specifying effective dates; equalizing use tax burden on property used in business as between integrated and nonintegrated businesses; providing methods for claiming use tax exemptions; making issuance of direct pay permits discretionary; combining use tax, direct pay permit and sales tax direct pay permits to be combined and providing return due dates; requiring certain other out of state retailers to collect use taxes on sales of property or taxable services to customers in this state; specifying effective dates; providing additional adjustments to federal adjusted gross income for personal income tax purposes; allowing credit against corporation net income taxes for research and development expenditures; amending definition of "road," "public road" and "highway"; making other technical corrections; and specifying effective dates.

Be it enacted by the Legislature of West Virginia:

That article ten, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new section, designated section ten-a; that section nine, article twelve of said chapter be amended and reenacted; that article

thirteen-b of said chapter be amended by adding thereto a new section, designated section three-b; that sections two, four-b, seven, eight-a, nine, nine-b, nine-c, nine-d, eighteen and thirty-three, article fifteen of said chapter be amended and reenacted; that said article be further amended by adding thereto a new section, designated section eight-b; that section three-b, three-c, three-d and twenty-nine, article fifteen-a of said chapter be amended and reenacted; that said article be further amended by adding thereto two new sections, designated sections two-a and six-a; that section twelve, article twenty-one of said chapter be amended and reenacted; that article twenty-four of said chapter be amended by adding thereto a new section, designated section nine-c; and that section three, article one, chapter seventeen be amended and reenacted, all to read as follows:

CHAPTER 11. TAXATION.

ARTICLE 10. PROCEDURE AND ADMINISTRATION.

§11-10-10a. Legal services.

1 Notwithstanding anything in this code to the con-
2 trary, the tax commissioner may utilize any full-time
3 attorney or attorneys employed by the tax department
4 as staff counsel to institute, prosecute, or defend any
5 suits, actions, or other legal proceedings, and it shall be
6 in the sole judgment and discretion of the tax
7 commissioner whether to utilize such staff attorney or
8 attorneys or the attorney general, whether on a case
9 by case basis or for all of the needs of the department
10 for legal services: *Provided*, That nothing contained
11 herein may be construed to authorize the administra-
12 tor to engage, hire or employ outside counsel without
13 first obtaining the permission of the attorney general.

ARTICLE 12. BUSINESS REGISTRATION TAX.

§11-12-9. Penalties.

1 In addition to the provisions of article ten of this
2 chapter, any person engaging in or prosecuting any
3 business contrary to the provisions of this article,
4 whether without obtaining a business registration
5 certificate therefor before commencing the same, or

6 by continuing the same after the termination of the
7 effective period of any such certificate may, in addi-
8 tion to paying the business registration tax, additions
9 to tax, penalties and interest, be liable for a penalty of
10 fifty dollars for each month or fraction thereof during
11 which he has been in default of the business registra-
12 tion tax. It shall be the duty of the tax commissioner
13 to collect the full amount of the business registration
14 tax, additions to tax, interest, and all penalties
15 imposed: *Provided*, That in no event may the total
16 penalty for failure to renew a business registration
17 certificate exceed fifty dollars per registration
18 certificate.

**ARTICLE 13D. BUSINESS AND OCCUPATION TAX CREDIT FOR
INDUSTRIAL EXPANSION AND REVITALIZATION
AND FOR RESEARCH AND DEVELOPMENT
PROJECTS.**

§11-13D-3b. Application of credit after June 30, 1989.

1 For taxable years ending on and after the first day
2 of July, one thousand nine hundred eighty-nine, the
3 credits allowed under section three shall continue to
4 be applied as provided in section three-a. In addition,
5 the credit allowed under subsection (f) of section three
6 that remains after its application as provided in section
7 three-a of this article shall be applied to reduce the tax
8 imposed by article twenty-four of this chapter: *Pro-*
9 *vided*, That this credit may not reduce by more than
10 fifty percent the amount of the net tax liability of the
11 taxpayer for the taxable year under article twenty-
12 four of this chapter, which amount of net tax liability
13 shall be determined before application of the credit
14 allowed by thirteen-c of this chapter.

ARTICLE 15. CONSUMERS SALES TAX.

§11-15-2. Definitions.

- 1 For the purpose of this article:
- 2 (a) "Persons" means any individual, partnership,
3 association, corporation, state or its political subdivi-
4 sions or agency of either, guardian, trustee, committee,
5 executor or administrator.

6 (b) "Tax commissioner" means the state tax
7 commissioner;

8 (c) "Gross proceeds" means the amount received in
9 money, credits, property or other consideration from
10 sales and services within this state, without deduction
11 on account of the cost of property sold, amounts paid
12 for interest or discounts or other expenses whatsoever.
13 Losses shall not be deducted, but any credit or refund
14 made for goods returned may be deducted.

15 (d) "Sale," "sales" or "selling" includes any transfer
16 of the possession or ownership of tangible personal
17 property for a consideration, including a lease or
18 rental, when the transfer or delivery is made in the
19 ordinary course of the transferor's business and is
20 made to the transferee or his agent for consumption or
21 use or any other purpose.

22 (e) "Vendor" means any person engaged in this state
23 in furnishing services taxed by this article or making
24 sales of tangible personal property.

25 (f) "Ultimate consumer" or "consumer" means a
26 person who uses or consumes services or personal
27 property.

28 (g) "Business" includes all activities engaged in or
29 caused to be engaged in with the object of gain or
30 economic benefit, direct or indirect, and all activities
31 of the state and its political subdivisions which involve
32 sales of tangible personal property or the rendering of
33 services when those service activities compete with or
34 may compete with the activities of other persons.

35 (h) "Tax" includes all taxes, interest and penalties
36 levied hereunder.

37 (i) "Service" or "selected service" includes all
38 nonprofessional activities engaged in for other persons
39 for a consideration, which involve the rendering of a
40 service as distinguished from the sale of tangible
41 personal property, but shall not include contracting,
42 personal services or the services rendered by an
43 employee to his employer or any service rendered for
44 resale.

45 (j) "Purchaser" means a person who purchases
46 tangible personal property or a service taxed by this
47 article.

48 (k) "Personal service" includes those:

49 (1) Compensated by the payment of wages in the
50 ordinary course of employment;

51 (2) Rendered to the person of an individual without,
52 at the same time, selling tangible personal property,
53 such as nursing, barbering, shoe shining, manicuring
54 and similar services.

55 (l) "Taxpayer" means any person liable for the tax
56 imposed by this article.

57 (m) "Drugs" includes all sales of drugs or appliances
58 to a purchaser, upon prescription of a physician or
59 dentist and any other professional person licensed to
60 prescribe.

61 (n) (1) "Directly used or consumed" in the activities
62 of manufacturing, transportation, transmission, com-
63 munication or the production of natural resources
64 means used or consumed in those activities or opera-
65 tions which constitute an integral and essential part of
66 such activities, as contrasted with and distinguished
67 from those activities or operations which are simply
68 incidental, convenient or remote to such activities.

69 (2) Uses of property or consumption of services
70 which constitute direct use or consumption in the
71 activities of manufacturing, transportation, transmis-
72 sion, communication or the production of natural
73 resources includes only:

74 (A) In the case of tangible personal property, phys-
75 ical incorporation of property into a finished product
76 resulting from manufacturing production or the
77 production of natural resources;

78 (B) Causing a direct physical, chemical or other
79 change upon property undergoing manufacturing
80 production or production of natural resources;

81 (C) Transporting or storing property undergoing
82 transportation, communication, transmission, manu-

83 facturing production or production of natural
84 resources;

85 (D) Measuring or verifying a change in property
86 directly used in transportation, communication, trans-
87 mission, manufacturing production or production of
88 natural resources;

89 (E) Physically controlling or directing the physical
90 movement or operation of property directly used in
91 transportation, communication, transmission, manu-
92 facturing production or production of natural
93 resources;

94 (F) Directly and physically recording the flow of
95 property undergoing transportation, communication,
96 transmission, manufacturing production or production
97 of natural resources;

98 (G) Producing energy for property directly used in
99 transportation, communication, transmission, manu-
100 facturing production or production of natural
101 resources;

102 (H) Facilitating the transmission of gas, water, steam
103 or electricity from the point of their diversion to
104 property directly used in transportation, communica-
105 tion, transmission, manufacturing production or pro-
106 duction of natural resources;


107 (I) Controlling or otherwise regulating atmospheric
108 conditions required for transportation, communication,
109 transmission, manufacturing production or production
110 of natural resources;

111 (J) Serving as an operating supply for property
112 undergoing transmission, manufacturing production or
113 production of natural resources, or for property
114 directly used in transportation, communication, trans-
115 mission, manufacturing production or production of
116 natural resources;

117 (K) Maintenance or repair of property directly used
118 in transportation, communication, transmission,
119 manufacturing production or production of natural
120 resources;

121 (L) Storage, removal or transportation of economic
122 waste resulting from the activities of manufacturing,
123 transportation, communication, transmission or the
124 production of natural resources;

125 (M) Pollution control or environmental quality or
126 protection activity directly relating to the activities of
127 manufacturing, transportation, communication, trans-
128 mission or the production of natural resources and
129 personnel, plant, product or community safety or
130 security activity directly relating to the activities of
131 manufacturing, transportation, communication, trans-
132 mission or the production of natural resources; or

133 (N) Otherwise be used as an integral and essential
134 part of transportation, communication, transmission,
135 manufacturing production or production of natural
136 resources *see* 

137 (3) Uses of property or services which would not
138 constitute direct use or consumption in the activities of
139 manufacturing, transportation, transmission, commu-
140 nication or the production of natural resources
141 includes, but are not limited to:

142 (A) Heating and illumination of office buildings;

143 (B) Janitorial or general cleaning activities;

144 (C) Personal comfort of personnel;

145 (D) Production planning, scheduling of work, or
146 inventory control;

147 (E) Marketing, general management, supervision,
148 finance, training, accounting and administration; or

149 (F) An activity or function incidental or convenient
150 to transportation, communication, transmission, manu-
151 facturing production or production of natural resour-
152 ces, rather than an integral and essential part of such
153 activities.

154 (o) "Contracting."

see 155 (1) *In General.* — "Contracting" means and includes
156 the furnishing of work, or both materials and work,
157 for another (by a sole contractor, general contractor,

158 prime contractor or subcontractor) in fulfillment of a
159 contract for the construction, alteration, repair, deco-
160 ration or improvement of a new or existing building or
161 structure, or any part thereof, or for removal or
162 demolition of a building or structure, or any part
163 thereof, or for the alteration, improvement or develop-
164 ment of real property.

165 (2) *Form of contract not controlling.* — An activity
166 that falls within the scope of the definition of contract-
167 ing shall constitute contracting regardless of whether
168 such contract governing the activity is written or
169 verbal and regardless of whether it is in substance or
170 form a lump sum contract, a cost-plus contract, a time
171 and materials contract (whether or not open-ended),
172 or any other kind of construction contract.

173 (3) *Special rules.* — For purposes of this definition:

174 (A) The term “structure” includes, but is not limited
175 to, everything built up or composed of parts joined
176 together in some definite manner and attached or
177 affixed to real property, or which adds utility to real
178 property or any part thereof, or which adds utility to
179 a particular parcel of property and is intended to
180 remain there for an indefinite period of time.

181 (B) The term “alteration” means and is limited to
182 alterations which are capital improvements to a
183 building or structure or to real property.

184 (C) The term “repair” means and is limited to
185 repairs which are capital improvements to a building
186 or structure or to real property.

187 (D) The term “decoration” means and is limited to
188 decorations which are capital improvements to a
189 building or structure or to real property.

190 (E) The term “improvement” means and is limited
191 to improvements which are capital improvements to a
192 building or structure or to real property.

193 (F) The term “capital improvement” means
194 improvements that are affixed to or attached to and
195 become a part of a building or structure or the real

196 property or which add utility to real property or any
197 part thereof and that last, or are intended to be
198 relatively permanent. As used herein, "relatively
199 permanent" means lasting at least a year or longer in
200 duration without the necessity for regularly scheduled
201 recurring service to maintain such capital improve-
202 ment. "Regular recurring service" means regularly
203 scheduled service intervals of less than one year.

204 (G) Contracting does not include the furnishing of
205 work, or both materials and work in the nature of
206 hookup, connection, installation or other services if
207 such service is incidental to the retail sale of tangible
208 personal property from the service provider's inven-
209 tory: *Provided*, That such hook-up, connection or
210 installation of the foregoing is incidental to the sale of
211 the same and performed by the seller thereof or
212 performed in accordance with arrangements made by
213 the seller thereof. Examples of transactions that are
214 excluded from the definition of contracting pursuant
215 hereto include, but are not limited to, the sale of wall-
216 to-wall carpeting and the installation of wall-to-wall
217 carpeting, the sale, hookup, and connection of mobile
218 homes, window air conditioning units, dishwashers,
219 clothing washing machines or dryers, other household
220 appliances, drapery rods, window shades, venetian
221 blinds, canvas awnings, free standing industrial or
222 commercial equipment and other similar items of
223 tangible personal property. Repairs made to the
224 foregoing are within the definition of contracting if
225 such repairs involve permanently affixing to or
226 improving real property or something attached thereto
227 which extends the life of the real property or some-
228 thing affixed thereto or allows or is intended to allow
229 such real property or thing permanently attached
230 thereto to remain in service for a year or longer.

231 (p) "Manufacturing" means a systematic operation
232 or integrated series of systematic operations engaged
233 in as a business or segment of a business which
234 transforms or converts tangible personal property by
235 physical, chemical or other means into a different

236 form, composition or character from that in which it
237 originally existed.

238 (q) "Transportation" means the act or process of
239 conveying, as a commercial enterprise, passengers or
240 goods from one place or geographical location to
241 another place or geographical location.

242 (r) "Transmission" means the act or process of
243 causing liquid, natural gas or electricity to pass or be
244 conveyed from one place or geographical location to
245 another place or geographical location through a
246 pipeline or other medium for commercial purposes.

247 (s) "Communication" means all telephone, radio,
248 light, light wave, radio telephone, telegraph and other
249 communication or means of communication, whether
250 used for voice communication, computer data trans-
251 mission or other encoded symbolic information
252 transfers and shall include commercial broadcast
253 radio, commercial broadcast television and cable
254 television.

255 (t) "Production of natural resources" means the
256 performance, by either the owner of the natural
257 resources or another, of the act or process of exploring,
258 developing, severing, extracting, reducing to possession
259 and loading for shipment for sale, profit or commercial
260 use of any natural resource products and any reclama-
261 tion, waste disposal or environmental activities asso-
262 ciated therewith.

§11-15-4b. Liability of purchaser; assessment and collection.

1 If any purchaser refuses or otherwise does not pay
2 to the vendor the tax imposed by section three of this
3 article, or in the case of a sale subject to section nine-
4 c of this article, a purchaser refuses to sign and
5 present to the vendor a proper certificate indicating
6 the sale is not subject to this tax, or signs or presents
7 to the vendor a false certificate, or after signing and
8 presenting a proper certificate uses the items pur-
9 chased in such manner that the sale would be subject
10 to the tax, he shall be personally liable for the amount
11 of tax applicable to the transaction or transactions:

12 *Provided*, That nothing herein relieves any purchaser
13 who owes the tax and who has not paid the tax
14 imposed by section three of this article from liability
15 therefor.

16 In such cases the tax commissioner has authority to
17 make an assessment against such purchaser, based
18 upon any information within his possession or that
19 may come into his possession. This assessment and
20 notice thereof shall be made and given in accordance
21 with sections seven and eight, article ten of this
22 chapter.

23 This section may not be construed as relieving the
24 vendor from liability for the tax.

**§11-15-7. Tax on gross proceeds of sales or value of manu-
factured, etc., products.**

1 (a) A person exercising the privilege of producing
2 for sale, profit or commercial use, any natural resour-
3 ces, product or manufactured product, and either
4 engaged in the business of selling such product not
5 otherwise exempted herein, or engaged in a business
6 or activity in which such natural resource, product or
7 manufactured product is used or consumed by him
8 and such use or consumption is not otherwise exempt
9 under this article, shall make returns of the gross
10 proceeds of such sales or, in the absence of sale, the
11 gross value of the natural resource, product or manu-
12 factured product, so used or consumed by him, and
13 pay the tax imposed by this article.

14 (b) The tax commissioner shall promulgate such
15 uniform and equitable rules as he deems necessary for
16 determining the gross value upon which the tax
17 imposed by this article is levied in the absence of a
18 sale, which value shall correspond as nearly as possible
19 to the gross proceeds from the sale of similar products
20 of like quality or character by the same person or by
21 another person.

22 (c) The provisions of this section, as amended by this
23 act, shall apply to natural resources, products or
24 manufactured products, used or consumed by the
25 producer or manufacturer thereof on or after the first
26 day of May, one thousand nine hundred eighty-nine.

§11-15-8a. Contractors.

1 (a) The provisions of this article shall not apply to
2 contracting services. However, purchases by a contrac-
3 tor of tangible personal property or taxable services
4 for use or consumption in the providing of a contract-
5 ing service shall be taxable beginning the first day of
6 March, one thousand nine hundred eighty-nine, except
7 as otherwise provided in this article.

8 (b) *Transition rules.* — The exemption from pay-
9 ment of tax on purchases of tangible personal property
10 or taxable services directly used or consumed in the
11 activity of contracting, as defined in section two of this
12 article, which expires as of the first day of March, one
13 thousand nine hundred eighty-nine, shall nevertheless
14 remain in effect with respect to:

15 (1) Tangible personal property or taxable services
16 purchased by a contractor on or after said first day of
17 March in fulfillment of a written contract for contract-
18 ing, as defined in section two of this article, that was
19 executed and legally binding on the parties thereto on
20 or before the fifteenth day of February, one thousand
21 nine hundred eighty-nine; or in fulfillment of a
22 written contract entered into after the said fifteenth
23 day of February pursuant to a written bid for con-
24 tracting that was made on or before the said fifteenth
25 day of February that was binding on the contractor,
26 but only to the extent that the bid is subsequently
27 incorporated into a written contract; or

28 (2) Tangible personal property or taxable services
29 purchased by a contractor on or after the said first day
30 of March pursuant to a written contract executed on
31 or before the fifteenth day of February, one thousand
32 nine hundred eight-nine, to purchase in specified
33 quantities identified tangible personal property or
34 specified taxable services; *or*

35 (3) Tangible personal property or taxable services
36 purchased by a contractor for consumption or use in
37 fulfillment of a written contract entered into before
38 the first day of September, one thousand nine hun-
39 dred eighty-nine, when such contract is for the

40 construction of a new improvement to real property
41 the construction or operation of which was approved
42 by a federal or state regulatory body prior to the first
43 day of February, one thousand nine hundred eighty-
44 nine, or pursuant to a federal grant awarded prior to
45 such first day of February.

46 (c) *Renewals and extensions.* — A renewal of any
47 contract shall constitute a new contract for purposes of
48 this section, and the date of entry into a contract
49 renewal by the parties, the date or dates of tender of
50 consideration and the time of performance of any
51 contractual obligations under a renewed contract shall
52 be treated as the dates for determining application of
53 this section to the renewed contract. Extensions of
54 time granted or agreed upon by the parties to a
55 contract for performance of the contract or for tender
56 of consideration under the contract shall not be
57 treated as contract renewals. Contracts to which such
58 extensions apply shall be treated under these transi-
59 tion rules as if the original contractual provisions for
60 performance and tender of consideration remain in
61 effect.

62 (d) *Definitions.* — For purposes of this section:

63 (1) The term “contract” or “contracts” means
64 written agreements reciting or setting forth a fixed
65 price consideration or a consideration based upon cost
66 plus a stated percentage or a stated monetary incre-
67 ment. This term shall not mean or include ongoing
68 sales contracts, contracts whereby any element of the
69 consideration or the property or services sold or to be
70 rendered in performance of the contract are unde-
71 fined, or determined, as to either nature or quantity,
72 subsequent to the making of the contract, or any open-
73 ended contract.

74 (2) The term “contract renewal” or “renewal”
75 means a covenant or agreement entered into or
76 assumed by parties which have a current contractual
77 relation or which have had a past contractual relation,
78 whereby the parties agree to incur obligations beyond
79 those which they were, or would have been, required,

80 at the minimum, to carry out under their current or
81 past contractual relation.

§11-15-8b. Nonresident contractor — registration, bond, etc.

1 (a) Every nonresident contractor shall register with
2 the tax commissioner, prior to engaging in the perfor-
3 mance of a contract in this state.

4 (b)(1) At the time of registration, the contractor shall
5 deposit with the tax commissioner six percent of the
6 amount the contractor is to receive for the perfor-
7 mance of the contract which shall be held within a
8 Contractors Use Tax Fund pending the completion of
9 the contract, the determination of the taxes due this
10 state under this article and article fifteen-a of this
11 chapter because of such contract and the payment of
12 the tax.

13 (2) In lieu of the deposit, the contractor may provide
14 a corporate surety bond to be approved by the tax
15 commissioner as to form, sufficiency, value, amount,
16 stability, and other features necessary to provide a
17 guarantee of payment of the compensating tax due
18 this state.

19 (c) In addition, within thirty days after registration,
20 under this section, the contractor shall file a statement
21 with the tax commissioner itemizing the machinery,
22 materials, supplies, and equipment that he has or will
23 have on hand at the time he begins the fulfillment of
24 the contract, including where such tangible personal
25 property has been brought, shipped, or transported
26 from outside this state upon which neither the tax
27 imposed by this article or article fifteen-a of this
28 chapter has been paid, and shall pay the tax due
29 thereon at the time of filing and thereafter shall
30 report and pay the taxes as required by this article
31 and article fifteen-a of this chapter.

§11-15-9. Exemptions.

1 The following sales and services are exempt:

2 (a) Sales of gas, steam and water delivered to
3 consumers through mains or pipes, and sales of
4 electricity;

5 (b) Sales of textbooks required to be used in any of
6 the schools of this state or in any institution in this
7 state which qualifies as a nonprofit or educational
8 institution subject to the West Virginia department of
9 education or West Virginia board of regents;

10 (c) Sales of property or services to the state, its
11 institutions or subdivisions, and to the United States,
12 including agencies of federal, state or local govern-
13 ments for distribution in public welfare or relief work;

14 (d) Sales of vehicles which are titled by the depart-
15 ment of motor vehicles and which are subject to the
16 tax imposed by section four, article three, chapter
17 seventeen-a of this code, or like tax;

18 (e) Sales of property or services to churches and
19 bona fide charitable organizations who make no
20 charge whatsoever for the services they render:
21 *Provided*, That the exemption herein granted shall
22 apply only to services, equipment, supplies, food for
23 meals and materials directly used or consumed by
24 these organizations, and shall not apply to purchases of
25 gasoline or special fuel;

26 (f) Sales of tangible personal property or services to
27 a corporation or organization which has a current
28 registration certificate issued under article twelve of
29 this chapter, is exempt from federal income taxes
30 under section 501(c)(3) or (c)(4) of the Internal Reve-
31 nue Code of 1986, as amended, and is:

32 (1) A church or a convention or association of
33 churches as defined in section 170 of the Internal
34 Revenue Code of 1986, as amended;

35 (2) An elementary or secondary school which main-
36 tains a regular faculty and curriculum and has a
37 regularly enrolled body of pupils or students in
38 attendance at the place in this state where its educa-
39 tional activities are regularly carried on;

40 (3) A corporation or organization which annually
41 receives more than one half of its support from any
42 combination of gifts, grants, direct or indirect charita-
43 ble contributions, or membership fees; or

44 (4) An organization which has no paid employees
45 and its gross income from fund raisers, less reasonable
46 and necessary expenses incurred to raise such gross
47 income (or the tangible personal property or services
48 purchases with such net income), is donated to an
49 organization which is exempt from income taxes
50 under section 501(c)(3) or (c)(4) of the Internal Reve-
51 nue Code of 1986, as amended;

52 (5) For purposes of this subsection:

53 (A) The term "support" includes, but is not limited
54 to:

55 (i) Gifts, grants, contributions or membership fees;

56 (ii) Gross receipts from fund raisers which include
57 receipts from admissions, sales of merchandise, perfor-
58 mance of services or furnishing of facilities in any
59 activity which is not an unrelated trade or business
60 (within the meaning of section 513 of the Internal
61 Revenue Code of 1986, as amended);

62 (iii) Net income from unrelated business activities,
63 whether or not such activities are carried on regularly
64 as a trade or business;

65 (iv) Gross investment income as defined in section
66 509(e) of the Internal Revenue Code of 1986, as
67 amended;

68 (v) Tax revenues levied for the benefit of a corpora-
69 tion or organization either paid to or expended on
70 behalf of such organization; and

71 (vi) The value of services or facilities (exclusive of
72 services or facilities generally furnished to the public
73 without charge) furnished by a governmental unit
74 referred to in section 170(c)(1) of the Internal Revenue
75 Code of 1986, as amended, to an organization without
76 charge. This term does not include any gain from the
77 sale or other disposition of property which would be
78 considered as gain from the sale or exchange of a
79 capital asset, or the value of an exemption from any
80 federal, state or local tax or any similar benefit;

81 (B) The term "charitable contribution" means a

82 contribution or gift to or for the use of a corporation
83 or organization, described in section 170(c)(2) of the
84 Internal Revenue Code of 1986, as amended;

85 (C) The term "membership fee" does not include
86 any amounts paid for tangible personal property or
87 specific services rendered to members by the corpora-
88 tion or organization;

89 (6) The exemption allowed by this subsection (f) does
90 not apply to sales of gasoline or special fuel or to sales
91 of tangible personal property or services to be used or
92 consumed in the generation of unrelated business
93 income as defined in section 513 of the Internal
94 Revenue Code of 1986, as amended. The provisions of
95 this subsection as amended by this act shall apply to
96 sales made after the thirtieth day of June, one thou-
97 sand nine hundred eight-nine: *Provided*, That the
98 exemption herein granted shall apply only to services,
99 equipment, supplies and materials used or consumed
100 in the activities for which such organizations qualify
101 as tax exempt organizations under the Internal Reve-
102 nue Code by these organizations and shall not apply to
103 purchases of gasoline or special fuel;

104 (g) Sales of property or services to persons engaged
105 in this state in the business of manufacturing, trans-
106 portation, transmission, communication or in the
107 production of natural resources: *Provided*, That the
108 exemption herein granted shall apply only to services,
109 machinery, supplies and materials directly used or
110 consumed in the businesses or organizations named
111 above, and shall not apply to purchases of gasoline or
112 special fuel: *Provided, however*, That on and after the
113 first day of July, one thousand nine hundred eighty-
114 seven, the exemption provided in this subsection shall
115 apply only to services, machinery, supplies and mate-
116 rials directly used or consumed in the activities of
117 manufacturing, transportation, transmission, commu-
118 nication or the production of natural resources in the
119 businesses or organizations named above and shall not
120 apply to purchases of gasoline or special fuel;

121 (h) An isolated transaction in which any taxable

122 service or any tangible personal property is sold,
123 transferred, offered for sale or delivered by the owner
124 thereof or by his representative for the owner's
125 account, such sale, transfer, offer for sale or delivery
126 not being made in the ordinary course of repeated and
127 successive transactions of like character by such owner
128 or on his account by such representative: *Provided*,
129 That nothing contained herein may be construed to
130 prevent an owner who sells, transfers or offers for sale
131 tangible personal property in an isolated transaction
132 through an auctioneer from availing himself or herself
133 of the exemption provided herein, regardless where
134 such isolated sale takes place. The tax commissioner
135 may adopt such legislative rule pursuant to chapter
136 twenty-nine-a of this code he deems necessary for the
137 efficient administration of this exemption;

138 (i) Sales of tangible personal property or of any
139 taxable services rendered for use or consumption in
140 connection with the commercial production of an
141 agricultural product the ultimate sale of which will be
142 subject to the tax imposed by this article or which
143 would have been subject to tax under this article:
144 *Provided*, That sales of tangible personal property and
145 services to be used or consumed in the construction of
146 or permanent improvement to real property and sales
147 of gasoline and special fuel shall not be exempt;

148 (j) Sales of tangible personal property to a person for
149 the purpose of resale in the form of tangible personal
150 property: *Provided*, That sales of gasoline and special
151 fuel by distributors and importers shall be taxable
152 except when the sale is to another distributor for
153 resale: *Provided, however*, That sales of building
154 materials or building supplies or other property to any
155 person engaging in the activity of contracting, as
156 defined in this article, which is to be installed in,
157 affixed to or incorporated by such person or his agent
158 into any real property, building or structure shall not
159 be exempt under this subsection, except that sales of
160 tangible personal property to a person engaging in the
161 activity of contracting pursuant to a written contract
162 with the United States, this state, or with a political

163 subdivision thereof, or with a public corporation
164 created by the Legislature or by another government
165 entity pursuant to an act of the Legislature, for a
166 building or structure (or improvement thereto) or
167 other improvement to real property that is or will be
168 owned and used by the governmental entity for a
169 governmental or proprietary purpose, who incorpo-
170 rates such property in such building, structure or
171 improvement shall, with respect to such tangible
172 personal property, nevertheless be deemed to be the
173 vendor of such property to the governmental entity
174 and any person seeking to qualify for and assert this
175 exception must do so pursuant to such legislative rules
176 and regulations as the tax commissioner may promul-
177 gate and upon such forms as the tax commissioner
178 may prescribe. A subcontractor who, pursuant to a
179 written subcontract with a prime contractor who
180 qualifies for this exception, provides equipment, or
181 materials, and labor to such a prime contractor shall
182 be treated in the same manner as the prime contractor
183 is treated with respect to the prime contract under
184 this exception and the legislative rules and regulations
185 promulgated by the tax commissioner;

186 (k) Sales of property or services to nationally
187 chartered fraternal or social organizations for the sole
188 purpose of free distribution in public welfare or relief
189 work: *Provided*, That sales of gasoline and special fuel
190 shall be taxable;

191 (l) Sales and services, fire fighting or station house
192 equipment, including construction and automotive,
193 made to any volunteer fire department organized and
194 incorporated under the laws of the state of West
195 Virginia: *Provided*, That sales of gasoline and special
196 fuel shall be taxable;

197 (m) Sales of newspapers when delivered to consu-
198 mers by route carriers;

199 (n) Sales of drugs dispensed upon prescription and
200 sales of insulin to consumers for medical purposes;

201 (o) Sales of radio and television broadcasting time,
202 preprinted advertising circulars and newspaper and

203 outdoor advertising space for the advertisement of
204 goods or services;

205 (p) Sales and services performed by day-care centers;

206 (q) Casual and occasional sales of property or
207 services not conducted in a repeated manner or in the
208 ordinary course of repetitive and successive transac-
209 tions of like character by a corporation or organization
210 which is exempt from tax under subsection (f) of this
211 section on its purchases of tangible personal property
212 or services:

213 (1) For purposes of this subsection, the term "casual
214 and occasional sales not conducted in repeated manner
215 or in the ordinary course of repetitive and successive
216 transactions of like character" means sales of tangible
217 personal property or services at fund raisers sponsored
218 by a corporation or organization which is exempt,
219 under subsection (f) of this section, from payment of
220 the tax imposed by this article on its purchases, when
221 such fund raisers are of limited duration and are held
222 no more than six times during any twelve-month
223 period and limited duration means no more than
224 eighty-four consecutive hours;

225 (2) The provisions of this subsection (q), as amended
226 by this act, shall apply to sales made after the thirtieth
227 day of June, one thousand nine hundred eighty-nine;

228 (r) Sales of property or services to a school which
229 has approval from the West Virginia board of regents
230 to award degrees, which has its principal campus in
231 this state, and which is exempt from federal and state
232 income taxes under section 501(c)(3) of the Internal
233 Revenue Code of 1986, as amended: *Provided*, That
234 sales of gasoline and special fuel shall be taxable;

235 (s) Sales of mobile homes to be utilized by purchas-
236 ers as their principal year-round residence and dwell-
237 ing: *Provided*, That these mobile homes shall be
238 subject to tax at the three-percent rate;

239 (t) Sales of lottery tickets and materials by licensed
240 lottery sales agents and lottery retailers authorized by
241 the state lottery commission, under the provisions of
242 article twenty-two, chapter twenty-nine of this code;

243 (u) Leases of motor vehicles titled pursuant to the
244 provisions of article three, chapter seventeen-a of this
245 code to lessees for a period of thirty or more consec-
246 utive days. This exemption shall apply to leases
247 executed on or after the first day of July, one thou-
248 sand nine hundred eighty-seven, and to payments
249 under long-term leases executed before such date, for
250 months thereof beginning on or after such date;

251 (v) Notwithstanding the provisions of subsection (g)
252 of this section or any provisions of this article to the
253 contrary, sales of property and services to persons
254 subject to tax under article thirteen, thirteen-a or
255 thirteen-b of this chapter: *Provided*, That the exemp-
256 tion herein granted shall apply both to property or
257 services directly or not directly used or consumed in
258 the conduct of privileges which are subject to tax
259 under such articles but shall not apply to purchases of
260 gasoline or special fuel;

261 (w) Sales of propane to consumers for poultry house
262 heating purposes, with any seller to such consumer
263 who may have prior paid such tax in his price, to not
264 pass on the same to the consumer, but to make
265 application and receive refund of such tax from the
266 tax commissioner, pursuant to rules and regulations
267 which shall be promulgated by the tax commissioner;
268 and notwithstanding the provisions of section eighteen
269 of this article or any other provisions of such article to
270 the contrary;

271 (x) Any sales of tangible personal property or
272 services purchased after the thirtieth day of Septem-
273 ber, one thousand nine hundred eighty-seven, and
274 lawfully paid for with food stamps pursuant to the
275 federal food stamp program codified in 7 United States
276 Code, §2011, et seq., as amended, or with drafts issued
277 through the West Virginia special supplemental food
278 program for women, infants and children codified in
279 42 United States Code, §1786;

280 (y) Sales of tickets for activities sponsored by
281 elementary and secondary schools located within this
282 state;

283 (z) Sales of electronic data processing services and
284 related software: *Provided*, That for the purposes of
285 this subsection (z) "electronic data processing servi-
286 ces" means (1) the processing of another's data,
287 including all processes incident to processing of data
288 such as keypunching, keystroke verification, rearrang-
289 ing or sorting of previously documented data for the
290 purpose of data entry or automatic processing, and
291 changing the medium on which data is sorted,
292 whether these processes are done by the same person
293 or several persons; and (2) providing access to com-
294 puter equipment for the purpose of processing data or
295 examining or acquiring data stored in or accessible to
296 such computer equipment;

297 (aa) Tuition charged for attending educational
298 summer camps;

299 (bb) Sales of building materials or building supplies
300 or other property to an organization qualified under
301 section 501(c)(3) or (c)(4) of the Internal Revenue Code
302 of 1986, as amended, which are to be installed in,
303 affixed to or incorporated by such organization or its
304 agent into real property, or into a building or structure
305 which is or will be used as permanent low-income
306 housing, transitional housing, emergency homeless
307 shelter, domestic violence shelter or emergency chil-
308 dren and youth shelter if such shelter is owned,
309 managed, developed or operated by an organization
310 qualified under section 501(c)(3) or (c)(4) of the
311 Internal Revenue Code of 1986, as amended;

312 (cc) Dispensing of services performed by one corpo-
313 ration for another corporation when both corporations
314 are members of the same controlled group. Control
315 means ownership, directly or indirectly, of stock
316 possessing fifty percent or more of the total combined
317 voting power of all classes of the stock of a corporation
318 entitled to vote or ownership, directly or indirectly, of
319 stock possessing fifty percent or more of the value of
320 the corporation;

321 (dd) Food for the following shall be exempt:

322 (1) Food purchased or sold by public or private

323 schools, school sponsored student organizations, or
324 school sponsored parent-teacher associations to stu-
325 dents enrolled in such school or to employees of such
326 school during normal school hours; but not those sales
327 of food made to the general public;

328 (2) Food purchased or sold by a public or private
329 college or university or by a student organization
330 officially recognized by such college or university to
331 students enrolled at such college or university when
332 such sales are made on a contract basis so that a fixed
333 price is paid for consumption of food products for a
334 specific period of time without respect to the amount
335 of food product actually consumed by the particular
336 individual contracting for the sale and no money is
337 paid at the time the food product is served or
338 consumed;

339 (3) Food purchased or sold by a nonprofit organiza-
340 tion or a governmental agency under a program
341 funded by a state or the United States to low-income
342 elderly persons at or below cost;

343 (4) Food sold in an occasional sale by a charitable or
344 nonprofit organization including volunteer fire depart-
345 ments and rescue squads, if the purpose of the sale is
346 to obtain revenue for the functions and activities of
347 the organization and the revenue so obtained is
348 actually expended for that purpose;

349 (5) Food sold by any religious organization at a social
350 or other gathering conducted by it or under its
351 auspices, if the purpose in selling the food is to obtain
352 revenue for the functions and activities of the organi-
353 zation and the revenue obtained from selling the food
354 is actually used in carrying on such functions and
355 activities: *Provided*, That purchases made by such
356 organizations shall not be exempt as a purchase for
357 resale;

358 (ee) Sales of food by little leagues, midget football
359 leagues, youth football or soccer leagues and similar
360 types of organizations including scouting groups and
361 church youth groups if the purpose in selling the food
362 is to obtain revenue for the functions and activities of

363 the organization and the revenues obtained from
364 selling the food is actually used in supporting or
365 carrying on functions and activities of the groups:
366 *Provided*, That such purchases made by a such organ-
367 izations shall not be exempt as a purchase for resale;

368 (ff) Charges for room and meals by fraternities and
369 sororities to their members: *Provided*, That such
370 purchases made by a fraternity or sorority shall not be
371 exempt as a purchase for resale;

372 (gg) Sales of or charges for the transportation of
373 passengers in interstate commerce;

374 (hh) Sales of tangible personal property or services
375 to any person which this state is prohibited from
376 taxing under the laws of the United States or under
377 the constitution of this state; and

378 (ii) Sales of tangible personal property or services to
379 any person who claims exemption from the tax
380 imposed by this article or article fifteen-a of this
381 chapter pursuant to the provisions of any other
382 chapter of this code.

**§11-15-9b. Method for claiming exemptions, refunds of tax,
credit against other taxes.**

1 (a) Any person having a right or claim to any
2 exemption set forth in section nine of this article
3 except those exemptions set forth in subsections (a),
4 (b), (c), (d), (f), (h), (i), (j), (m), (n), (o), (p), (q), (r), (s),
5 (t), (u), (w), (x), (y), (z), (aa), (cc), (dd), (ee), (ff), (gg),
6 (hh), and (ii) of said section nine, or the exemption of
7 sales of property or services to churches under subsec-
8 tion (e) of said section nine, shall pay to the vendor the
9 tax imposed by this article and may exercise or assert
10 such exemption only in accordance with subsection (b)
11 or subsection (c) of this section.

12 (b) Any person who has paid the tax imposed by this
13 article and who may lawfully claim exemption from
14 the tax under a subsection of section nine of this
15 article not enumerated in subsection (a) of this section
16 may exercise or assert such claim by filing a claim for
17 refund of consumers sales and service tax overpay-

18 ments on such form and in such manner as the tax
19 commissioner may require and in accordance with the
20 requirements of this section. The tax commissioner
21 shall cause a refund to be made within thirty days of
22 receipt of a lawful and accurate claim.

23 (c) In lieu of filing a claim for refund of consumers
24 sales and service tax overpayments, the taxpayer may,
25 at his option, file a claim for credit on such form and
26 in such manner as the tax commissioner may require
27 and credit the amount of consumers sales and service
28 tax overpayments against certain payments of tax due
29 in accordance with the requirements of this section as
30 follows:

31 (1) If the taxpayer is required to remit the tax
32 imposed under this article or article fifteen-a of this
33 chapter pursuant to section five or subsection (b) of
34 section nine-d of this article or subsection (b) of
35 section three-d of said article fifteen-a, the taxpayer
36 may credit the amount of consumers sales and service
37 tax overpayments against the remittance of the tax
38 imposed under said articles otherwise due; or

39 (2) If the taxpayer is subject to the tax imposed
40 under article thirteen of this chapter, the taxpayer
41 may credit the amount of consumers sales and service
42 tax overpayments remaining after application of part
43 (1) of this subsection against the taxpayer's quarterly
44 or monthly remittance of the tax imposed under said
45 article thirteen otherwise due; or

46 (3) If the taxpayer is subject to the tax imposed
47 under article twelve-a of this chapter, the taxpayer
48 may credit the amount of consumers sales and service
49 tax overpayments remaining after application of parts
50 (1) and (2) of this subsection against the taxpayer's
51 annual or semiannual remittance of the tax imposed
52 under said article twelve-a otherwise due; or

53 (4) If the taxpayer is subject to the tax imposed
54 under article thirteen-a of this chapter, the taxpayer
55 may credit the amount of consumers sales and service
56 tax overpayments remaining after application of parts
57 (1), (2) and (3) of this subsection against the taxpayer's

58 quarterly or monthly remittance of the tax imposed
59 under said article thirteen-a otherwise due; or

60 (5) If the taxpayer is subject to the tax imposed
61 under article thirteen-b of this chapter, the taxpayer
62 may credit the amount of consumers sales and service
63 tax overpayments remaining after application of parts
64 (1), (2), (3) and (4) of this subsection against the
65 taxpayer's quarterly or monthly remittance of the tax
66 imposed under said article thirteen-b otherwise due;
67 or

68 (6) If the taxpayer is subject to the tax imposed
69 under article twenty-four of this chapter, the taxpayer
70 may credit the amount of consumers sales and service
71 tax overpayments remaining after application of parts
72 (1), (2), (3), (4) and (5) of this subsection against the
73 taxpayer's installment of estimated tax imposed under
74 said article twenty-four and otherwise due under
75 section seventeen, article twenty-four of this chapter;
76 or

77 (7) If the taxpayer is subject to the tax imposed
78 under article twenty-one of this chapter, the taxpayer
79 may credit the amount of consumers sales and service
80 tax overpayments remaining after application of parts
81 (1), (2), (3), (4), (5) and (6) of this subsection against the
82 taxpayer's installment of estimated tax imposed under
83 said article twenty-one and otherwise due under
84 section fifty-six, article twenty-one of this chapter; or

85 (8) If the taxpayer is subject to the tax imposed
86 under article twenty-three of this chapter, the tax-
87 payer may credit the amount of consumers sales and
88 service tax overpayments remaining after application
89 of parts (1), (2), (3), (4), (5), (6) and (7) of this subsection
90 against the taxpayer's annual remittance of the tax
91 imposed under said article twenty-three and otherwise
92 due; or

93 (9) If the taxpayer is required to deduct and with-
94 hold tax under article twenty-one of this chapter, the
95 taxpayer may credit the amount of consumers sales
96 and service tax overpayments remaining after applica-
97 tion of parts (1), (2), (3), (4), (5), (6), (7) and (8) of this

98 subsection against the taxpayer's monthly remittance
99 of the tax withheld under said article twenty-one and
100 otherwise due.

101 (d) Any person asserting or exercising a claim of
102 exemption from the tax imposed by this article under
103 subsections (b) or (c) of this section shall file with the
104 tax commissioner an application for exemption in such
105 form as the tax commissioner shall prescribe and such
106 affidavits, invoices, sales slips, records or documents as
107 the tax commissioner may require to prove or verify
108 the taxpayer's right and entitlement to such exemp-
109 tion. The tax commissioner may inspect or examine
110 the records, books, papers, documents, affidavits, sales
111 slips and invoices of a taxpayer or any other person to
112 verify the truth and accuracy of any report or return
113 or to ascertain whether the tax imposed by this article
114 has been paid.

115 In addition to the powers of the tax commissioner
116 set forth in article ten of this chapter, as a further
117 means of obtaining the records, books, papers, docu-
118 ments, affidavits, sales slips or invoices of a taxpayer
119 or any other person and ascertaining the amount of
120 taxes paid or due under this article or any report,
121 form, document or affidavit required under this
122 article, the commissioner shall have the power to
123 examine witnesses under oath; and if any witness shall
124 fail or refuse at the request of the commissioner to
125 grant access to the books, records, papers, documents,
126 affidavits, sales slips or invoices requested by the
127 commissioner, the commissioner shall certify the facts
128 and the names to the circuit court of the county
129 having jurisdiction over the party and such court shall
130 thereupon issue a subpoena duces tecum to such party
131 to appear before the commissioner, at a place desig-
132 nated within the jurisdiction of such court, on a day
133 fixed.

134 (e) All claims for refund of consumers sales and
135 service tax overpayments under subsection (b) of this
136 section shall be filed within the time limitation for
137 filing claims for refund set forth at section fourteen,
138 article ten of this chapter. Any claim for such refund

139 or claim of entitlement to such refund made or
140 asserted after the said time limitation shall be null and
141 void, and if the consumers sales and service tax
142 overpayment has not otherwise been credited against
143 tax remittances in accordance with this section, the
144 said claims shall be forfeited.

145 (f) Any credit of consumers sales and service tax
146 overpayments against taxes under subsection (c) of
147 this section shall be taken within one year after the
148 payment of the said consumers sales and service tax
149 by the consumer to the vendor. Any such credit or
150 claim of entitlement to such credit made or asserted
151 more than one year after the payment of such tax by
152 the consumer to the vendor shall be null and void, and
153 such consumers sales and service tax overpayments
154 shall be forfeited unless refunded under subsection (b)
155 of this section.

156 (g) Any assignment of the right or entitlement to a
157 refund or credit arising under this section shall be
158 subject to strict proof, and any assignee claiming a
159 right or entitlement to an assigned refund or credit
160 shall submit an affidavit in such form as the tax
161 commissioner shall prescribe signed by the assignor
162 acknowledging the assignment. The assignee shall
163 attest to the assignment and the terms thereof on his
164 signed application filed under subsection (d) of this
165 section for refund or credit, and will be subject to the
166 penalties provided under West Virginia law for per-
167 jury for any falsehood set forth therein and will be
168 subject to the penalties set forth in article nine of this
169 chapter for any violation thereof. Except as provided
170 in this subsection (g), no payment of a refund arising
171 under this section shall be made to any person other
172 than the taxpayer making the original overpayment of
173 consumers sales and service tax.

174 (h) No refund shall be due and no credit shall be
175 allowed under this section unless the taxpayer or
176 assignee shall have filed a claim for refund or a claim
177 for credit, as appropriate, with the tax commissioner
178 in accordance with this section.

179 (i) Any claim for a refund of consumers sales and
180 service tax overpayments or for a tax credit for
181 consumers sales and service tax overpayments which
182 is not timely filed or not filed in proper form or in
183 accordance with the requirements of this section shall
184 not be construed to constitute a moral obligation of the
185 state of West Virginia for payment. No overpayment of
186 consumers sales and service tax made under this
187 section shall be subject to subsection (d), section
188 seventeen, article ten of this chapter or paragraph
189 (e)(1), section seventeen, article ten of this chapter.

190 (j) The provisions of this section become effective
191 after the thirtieth day of June, one thousand nine
192 hundred eighty-seven.

§11-15-9c. Delivery of a certificate of exemption in lieu of tax.

1 Persons having a right or claim to any exemption set
2 forth in subsections (a), (b), (c), (d), (f), (h), (i), (j), (m),
3 (n), (o), (p), (q), (r), (s), (t), (u), (w), (x), (y), (z), (aa),
4 (cc), (dd), (ee), (ff), (gg), (hh), and (ii) of section nine
5 of this article shall, in lieu of paying the tax imposed
6 by this article, execute a certificate of exemption in
7 such form as the tax commissioner may require, and
8 such executed exemption certificate shall be delivered
9 to the vendor in such manner as the tax commissioner
10 may require: *Provided*, That the tax commissioner
11 may identify exemptions for which exemption certifi-
12 cates are not required and as soon as practical may
13 specify by regulation exemptions for which exemption
14 certificates are not required.

§11-15-9d. Direct pay permits.

1 (a) Notwithstanding any other provision of this
2 article, the tax commissioner may, pursuant to rules
3 and regulations promulgated by him in accordance
4 with article three, chapter twenty-nine-a of this code,
5 authorize a person (as defined in section two) that is
6 a user, consumer, distributor or lessee to which sales
7 or leases of tangible personal property are made or
8 services provided, to pay any tax levied by this article
9 or article fifteen-a of this chapter directly to the tax

10 commissioner and waive the collection of the tax by
11 that person's vendor. No such authority shall be
12 granted or exercised except upon application to the tax
13 commissioner and after issuance by the tax commis-
14 sioner of a direct pay permit. Upon issuance of such
15 direct pay permit, payment of the tax imposed or
16 assertion of the exemptions allowed by this article or
17 article fifteen-a of this chapter on sales and leases of
18 tangible personal property and sales of taxable services
19 from the vendors thereof shall be made directly to the
20 tax commissioner by the permit holder.

21 (b) On or before the fifteenth day of each month,
22 every permit holder shall make and file with the tax
23 commissioner a consumer sales and use tax direct pay
24 permit return for the preceding month in the form
25 prescribed by the tax commissioner showing the total
26 value of the tangible personal property so used, the
27 amount of taxable services purchased, the amount of
28 consumers sales and use taxes due from the permit
29 holder, which amount shall be paid to the tax commis-
30 sioner with such return, and such other information as
31 the tax commissioner deems necessary: *Provided*, That
32 if the amount of consumers sales and use taxes due
33 averages less than one hundred dollars per month, the
34 tax commissioner may permit the filing of quarterly
35 returns in lieu of monthly returns and the amount of
36 tax shown thereon to be due shall be remitted on or
37 before the fifteenth day following the close of the
38 calendar quarter; and if the amount due averages less
39 than fifty dollars per calendar quarter, the tax com-
40 missioner may permit the filing of an annual direct
41 pay permit return and the amount of tax shown
42 thereon to be due shall be remitted on or before the
43 last day of January each year. The tax commissioner,
44 upon written request by the permit holder, may grant
45 a reasonable extension of time, upon such terms as the
46 tax commissioner may require, for the making and
47 filing of direct pay permit returns and paying the tax
48 due. Interest on such tax shall be chargeable on every
49 such extended payment at the rate specified in section
50 seventeen, article ten of this chapter.

51 (c) A permit issued pursuant to this section shall
52 continue to be valid until expiration of the taxpayers
53 registration year under article twelve of this chapter.
54 This permit shall automatically be renewed when the
55 taxpayers business registration certificate is issued for
56 the next succeeding fiscal year, unless the permit is
57 surrendered by the holder or canceled for cause by the
58 tax commissioner.

59 (d) Persons who hold a direct payment permit which
60 has not been canceled shall not be required to pay the
61 tax to the vendor as otherwise provided in this article
62 or article fifteen-a of this chapter. Such persons shall
63 notify each vendor from whom tangible personal
64 property is purchased or leased or from whom services
65 are purchased of their direct payment permit number
66 and that the tax is being paid directly to the tax
67 commissioner. Upon receipt of such notice, such
68 vendor shall be absolved from all duties and liabilities
69 imposed by this chapter for the collection and remit-
70 tance of the tax with respect to sales, of tangible
71 personal property and sales of services to such permit
72 holder. Vendors who make sales upon which the tax is
73 not collected by reason of the provisions of this section
74 shall maintain records in such manner that the
75 amount involved and identity of each such purchaser
76 may be ascertained.

77 (e) Upon the expiration, cancellation or surrender of
78 a direct payment permit, the provisions of this chap-
79 ter, without regard to this section, shall thereafter
80 apply to the person who previously held such permit,
81 and such person shall promptly so notify in writing
82 vendors from whom tangible personal property or
83 services are purchased or leased of such cancellation
84 or surrender. Upon receipt of such notice, the vendor
85 shall be subject to the provisions of this chapter,
86 without regard to this section, with respect to all sales,
87 distributions, leases or storage of tangible personal
88 property, thereafter made to or for such person.

§11-15-18. Tax on gasoline and special fuel.

1 (a) *General.* — All sales of gasoline or special fuel

2 by distributors or importers, except when to another
3 distributor for resale in this state, when delivery is
4 made in this state, shall be subject to the tax imposed
5 by this article, notwithstanding any provision of this
6 article to the contrary. Sales of gasoline or special fuel
7 by a person who paid the tax imposed by this article
8 on his purchases of fuel, shall not thereafter be again
9 taxed under the provisions of this article. This section
10 shall be construed so that all gallons of gasoline or
11 special fuel sold and delivered, or delivered, in this
12 state are taxed one time.

13 (b) *Measure of tax.* — The measure of tax on sales
14 of gasoline or special fuel by distributors or importers
15 shall be the average wholesale price as defined and
16 determined in subsection (c), section thirteen, article
17 fifteen-a of this chapter. For purposes of maintaining
18 revenue for highways, and recognizing that the tax
19 imposed by this article is generally imposed on gross
20 proceeds from sales to ultimate consumers, whereas
21 the tax on gasoline and special fuel herein is imposed
22 on the average wholesale price of such gasoline and
23 special fuel; in no case, for the purposes of taxation
24 under this article, shall such average wholesale price
25 be deemed to be less than ninety-seven cents per
26 gallon of gasoline or special fuel for all gallons of
27 gasoline and special fuel sold during the reporting
28 period, notwithstanding any provision of this article to
29 the contrary.

30 (c) *Definitions.* — For purposes of this section:

31 (1) "Aircraft" shall include any airplane or helicop-
32 ter that lands in this state on a regular or routine
33 basis, and transports passengers or freight.

34 (2) "Aircraft fuel" shall mean gasoline and special
35 fuel suitable for use in any aircraft engine.

36 (3) "Distributor" shall mean and include every
37 person:

38 (A) Who produces, manufactures, processes or other-
39 wise alters gasoline or special fuel in this state for use
40 or for sale; or

41 (B) Who engages in this state in the sale of gasoline
42 or special fuel for the purpose of resale or for distri-
43 bution; or

44 (C) Who receives gasoline or special fuel into the
45 cargo tank of a tank wagon in this state for use or sale
46 by such person.

47 (4) "Gasoline" shall mean and include any product
48 commonly or commercially known as gasoline, regard-
49 less of classification, suitable for use as fuel in an
50 internal combustion engine, except special fuel as
51 hereinafter defined, including any product obtained by
52 blending together any one or more products, with or
53 without other products, if the resultant product is
54 capable of the same use.

55 (5) "Importer" shall mean and include every person,
56 resident or nonresident, other than a distributor, who
57 receives gasoline or special fuel outside this state for
58 use, sale or consumption within this state, but shall
59 not include the fuel in the supply tank of a motor
60 vehicle that is not a motor carrier.

61 (6) "Motor carrier" shall mean and include: (A) Any
62 passenger vehicle which has seats for more than nine
63 passengers in addition to the driver, any road tractor,
64 tractor truck or any truck having more than two axles,
65 which is operated or caused to be operated, by any
66 person on any highway in this state using gasoline or
67 special fuel; and (B) any aircraft, barge or other
68 watercraft, or locomotive transporting passengers or
69 freight in or through this state.

70 (7) "Motor vehicle" shall mean and include automo-
71 biles, motor carriers, motor trucks, motorcycles and all
72 other vehicles or equipment, engines or machines
73 which are operated or propelled by combustion of
74 gasoline or special fuel.

75 (8) "Retail dealer of gasoline or special fuel" shall
76 mean and include any person not a distributor, who
77 sells gasoline or special fuel from a fixed location in
78 this state to users.

79 (9) "Special fuel" shall mean and include any gas or

80 liquid, other than gasoline, used or suitable for use as
81 fuel in an internal combustion engine. The term
82 "special fuel" shall include products commonly known
83 as natural or casinghead gasoline and shall include
84 gasoline and special fuel for heating any private
85 residential dwelling, building or other premises; but
86 shall not include any petroleum product or chemical
87 compound such as alcohol, industrial solvent, heavy
88 furnace oil, lubricant, etc., not commonly used nor
89 practicably suited for use as fuel in an internal
90 combustion engine.

91 (10) "Supply tank" shall mean any receptacle on a
92 motor vehicle from which gasoline or special fuel is
93 supplied for the propulsion of the vehicle or equip-
94 ment located thereon, exclusive of a cargo tank. A
95 supply tank includes a separate compartment of a
96 cargo tank used as a supply tank, and any auxiliary
97 tank or receptacle of any kind or cargo tank, from
98 which gasoline or special fuel is supplied for the
99 propulsion of the vehicle, whether or not such tank or
100 receptacle is directly connected to the fuel supply line
101 of the vehicle.

102 (11) "Tank wagon" shall mean and include any
103 motor vehicle or vessel with a cargo tank or cargo
104 tanks ordinarily used for making deliveries of gasoline
105 or special fuel, or both, for sale or use.

106 (12) "Taxpayer" shall mean any person liable for the
107 tax imposed by this article.

108 (13) "User" shall mean any person who purchases
109 gasoline or special fuel for use or consumption.

110 (d) *Tax due.* — The tax on sales of gasoline and
111 special fuel shall be paid by each taxpayer on or before
112 the twenty-fifth day of each month, by check, bank
113 draft, certified check or money order, payable to the
114 tax commissioner for the amount of tax due for the
115 preceding month, notwithstanding any provision of
116 this article to the contrary.

117 (e) *Monthly return.* — On or before the twenty-fifth
118 day of each month, the taxpayer shall make and file a

119 return for the preceding month showing such infor-
120 mation as the tax commissioner may require, notwith-
121 standing any provision of this article to the contrary.

122 (f) *Compliance.* — To facilitate ease of administra-
123 tion and compliance by taxpayers, the tax commis-
124 sioner may require distributors, importers and other
125 persons liable for the tax imposed by this article on
126 sales of gasoline or special fuel, to file a combined
127 return and make a combined payment of the tax due
128 under this article on sales of gasoline and special fuel,
129 and the tax due under article fourteen of this chapter,
130 on gasoline and special fuel. In order to encourage use
131 of a combined return each month and the making of
132 a single payment each month for both taxes, the due
133 date of the return and tax due under article fourteen
134 of this chapter is hereby changed from the last day of
135 each month to the twenty-fifth day of each month,
136 notwithstanding any provision in article fourteen of
137 this chapter to the contrary.

138 (g) *Dedication of tax to highways.* — All tax
139 collected under the provisions of this section after
140 deducting the amount of any refunds lawfully paid,
141 shall be deposited in the "road fund" in the state
142 treasurer's office, and shall be used only for the
143 purpose of construction, reconstruction, maintenance
144 and repair of highways, and payment of principal and
145 interest on state bonds issued for highway purposes:
146 *Provided,* That notwithstanding any provision to the
147 contrary, any tax collected on the sale of aircraft fuel
148 shall be deposited in the state treasurer's office and
149 transferred to the state aeronautical commission to be
150 used for the purpose of matching federal funds avail-
151 able for the reconstruction, maintenance and repair of
152 public airports and airport runways.

153 (h) *Construction.* — This section shall not be con-
154 strued as taxing any sale of gasoline or special fuel
155 which this state is prohibited from taxing under the
156 constitution of this state or the constitution or laws of
157 the United States.

158 (i) *Effective date.* — The provisions of chapter one
 159 hundred seventy-nine of the Acts of the Legislature,
 160 one thousand nine hundred eighty-three, shall take
 161 effect on the first day of April, one thousand nine
 162 hundred eighty-three. The amendments to this section
 163 made by the Legislature in the Regular Session, one
 164 thousand nine hundred eighty-nine, shall be effective
 165 on the first day of July, one thousand nine hundred
 166 eighty-nine.

§11-15-33. Effective Date.

1 (a) The provisions of this article as amended or
 2 added by Senate Bill No. 1 took effect on the first day
 3 of March, one thousand nine hundred eighty-nine, and
 4 apply to all sales made on or after that date: *Provided*,
 5 That if an effective date was expressly provided in a
 6 provision of such act, that specific effective date
 7 controlled in lieu of this general effective date
 8 provision.

9 (b) The provisions of this article as amended or
 10 added by this act shall take effect on the first day of
 11 July, one thousand nine hundred eighty-nine, and
 12 apply to all sales made on or after that date: *Provided*,
 13 That if an effective date is expressly provided in such
 14 provision, that specific effective date shall control in
 15 lieu of this general effective date provision.

ARTICLE 15A. USE TAX.

§11-15A-2a. Tax on value of property used or consumed in this state.

1 (a) Except as otherwise provided, a person who
 2 produces for sale, profit or commercial use, any
 3 natural resource, product or manufactured product,
 4 and uses or consumes such natural resource, product
 5 or manufactured product, in this state shall make
 6 returns of the gross value of the natural resource,
 7 product or manufactured product, so used or con-
 8 sumed by him in this state, and pay the tax imposed
 9 by this article, when such use or consumption is not
 10 otherwise exempt under this article.

11 (b) The tax commissioner shall promulgate such

12 uniform and equitable rules as he deems necessary for
13 determining the gross value upon which the tax
14 imposed by this article is levied in the absence of a
15 sale, which value shall correspond as nearly as possible
16 to the gross proceeds from the sale of similar products
17 of like quality or character by the same person or by
18 another person.

19 (c) A person who purchases or leases machinery or
20 equipment or other tangible personal property for use
21 in another state and then uses or consumes such
22 property in this state shall pay the tax imposed by this
23 article on the value of the property so used or con-
24 sumed in this state. The tax commissioner shall
25 promulgate such uniform and equitable rules as he
26 deems necessary for determining the measure of the
27 tax imposed by this article with respect to such
28 property.

29 (d) The provisions of this section shall apply to
30 property used or consumed in this state on or after the
31 first day of May, one thousand nine hundred eighty-
32 nine.

**§11-15A-3b. Method for claiming exemptions, refunds of tax,
credit against other taxes.**

1 (a) Any person having a right or claim to an exemp-
2 tion from the tax imposed by this article by reason of
3 any exemption set forth in section nine, article fifteen
4 of this chapter except those exemptions set forth in
5 subsections (a), (b), (c), (d), (f), (h), (i), (j), (m), (n), (o),
6 (p), (q), (r), (s), (t), (u), (w), (x), (y), (z), (aa), (cc), (dd),
7 (ee), (ff) (gg), (hh) and (ii) of said section nine, shall
8 pay to the vendor the tax imposed by this article and
9 may exercise or assert such exemption only in accor-
10 dance with subsection (b) or subsection (c) of this
11 section.

12 (b) Any person who has paid the tax imposed by this
13 article and who may lawfully claim under section
14 three of this article any exemption set forth under a
15 subsection of section nine of article fifteen not enu-
16 merated in subsection (a) of this section may exercise
17 or assert such claim by filing a claim for refund of use

18 tax overpayments on such form and in such manner
19 as the tax commissioner may require and in accor-
20 dance with the requirements of this section.

21 (c) In lieu of filing a claim for refund of use tax
22 overpayments, the taxpayer may, at his option, file a
23 claim for credit on such form and in such manner as
24 the tax commissioner may require and credit the
25 amount of use tax overpayments against certain
26 payments of tax due in accordance with the require-
27 ments of this section as follows:

28 (1) If the taxpayer is required to remit the tax
29 imposed under this article or article fifteen of this
30 chapter pursuant to section five or subsection (b) of
31 section nine-d of said article fifteen or subsection (b)
32 of section three-d of this article, the taxpayer may
33 credit the amount of use tax overpayments against the
34 remittance of the tax imposed under said articles
35 otherwise due; *or*

36 (2) If the taxpayer is subject to the tax imposed
37 under article thirteen of this chapter, the taxpayer
38 may credit the amount of use tax overpayments
39 remaining after application of part (1) of this subsec-
40 tion against the taxpayer's quarterly or monthly
41 remittance of the tax imposed under said article
42 thirteen otherwise due; *or*

43 (3) If the taxpayer is subject to the tax imposed
44 under article twelve-a of this chapter, the taxpayer
45 may credit the amount of use tax overpayments
46 remaining after application of parts (1) and (2) of this
47 subsection against the taxpayer's annual or semian-
48 nual remittance of the tax imposed under said article
49 twelve-a otherwise due; *or*

50 (4) If the taxpayer is subject to the tax imposed
51 under article thirteen-a of this chapter, the taxpayer
52 may credit the amount of use tax overpayments
53 remaining after application of parts (1), (2) and (3) of
54 this subsection against the taxpayer's quarterly or
55 monthly remittance of the tax imposed under said
56 article thirteen-a otherwise due; *or*

57 (5) If the taxpayer is subject to the tax imposed
58 under article thirteen-b of this chapter, the taxpayer
59 may credit the amount of use tax overpayments
60 remaining after application of parts (1), (2), (3) and (4)
61 of this subsection against the taxpayer's quarterly or
62 monthly remittance of the tax imposed under said
63 article thirteen-b otherwise due; or

64 (6) If the taxpayer is subject to the tax imposed
65 under article twenty-four of this chapter, the taxpayer
66 may credit the amount of use tax overpayments
67 remaining after application of parts (1), (2), (3), (4) and
68 (5) of this subsection against the taxpayer's installment
69 of estimated tax imposed under said article twenty-
70 four and otherwise due under section seventeen,
71 article twenty-four of this chapter; or

72 (7) If the taxpayer is subject to the tax imposed
73 under article twenty-one of this chapter, the taxpayer
74 may credit the amount of use tax overpayments
75 remaining after application of parts (1), (2), (3), (4), (5)
76 and (6) of this subsection against the taxpayer's
77 installment of estimated tax imposed under said article
78 twenty-one and otherwise due under section fifty-six,
79 article twenty-one of this chapter; or

80 (8) If the taxpayer is subject to the tax imposed
81 under article twenty-three of this chapter, the tax-
82 payer may credit the amount of use tax overpayments
83 remaining after application of parts (1), (2), (3), (4), (5),
84 (6) and (7) of this subsection against the taxpayer's
85 annual remittance of the tax imposed under said
86 article twenty-three and otherwise due; or

87 (9) If the taxpayer is required to deduct and with-
88 hold tax under article twenty-one of this chapter, the
89 taxpayer may credit the amount of use tax overpay-
90 ments remaining after application of parts (1), (2), (3),
91 (4), (5), (6), (7) and (8) of this subsection against the
92 taxpayer's monthly remittance of the tax withheld
93 under said article twenty-one and otherwise due.

94 (d) Any person asserting or exercising a claim of
95 exemption from the tax imposed by this article under
96 subsections (b) or (c) of this section shall file with the

97 tax commissioner an application for exemption in such
98 form as the tax commissioner shall prescribe and such
99 affidavits, invoices, sales slips, records or documents as
100 the tax commissioner may require to prove or verify
101 the taxpayer's right and entitlement to such exemp-
102 tion. The tax commissioner may inspect or examine
103 the records, books, papers, documents, affidavits, sales
104 slips and invoices of a taxpayer or any other person to
105 verify the truth and accuracy of any report or return
106 or to ascertain whether the tax imposed by this article
107 or article fifteen of this chapter has been paid.

108 In addition to the powers of the tax commissioner
109 set forth in article ten of this chapter, as a further
110 means of obtaining the records, books, papers, docu-
111 ments, affidavits, sales slips or invoices of a taxpayer
112 or any other person and ascertaining the amount of
113 taxes paid or due under this article or article fifteen of
114 this chapter or any report, form, document or affidavit
115 required under this article or article fifteen of this
116 chapter, the commissioner shall have the power to
117 examine witnesses under oath; and if any witness shall
118 fail or refuse at the request of the commissioner to
119 grant access to the books, records, papers, documents,
120 affidavits, sales slips or invoices requested by the
121 commissioner, the commissioner shall certify the facts
122 and the names to the circuit court of the county
123 having jurisdiction of the party, and such court shall
124 thereupon issue a subpoena duces tecum to such party
125 to appear before the commissioner, at a place desig-
126 nated within the jurisdiction of such court, on a day
127 fixed.

128 (e) All claims for refund of use tax overpayments
129 under subsection (b) of this section shall be filed
130 within the time limitation for filing claims for refund
131 set forth at section fourteen, article ten of this chapter.
132 Any claim for such refund or claim of entitlement to
133 such refund made or asserted after the said time
134 limitation shall be null and void, and if the use tax
135 overpayment has not otherwise been credited against
136 tax remittances in accordance with this section, the
137 said claims shall be forfeited.

138 (f) Any credit of use tax overpayments against taxes
139 under subsection (c) of this section shall be taken
140 within one year after the payment of the tax by the
141 taxpayer to the vendor. Any such credit or claim of
142 entitlement to such credit made or asserted more than
143 one year after the payment of such tax by the tax-
144 payer to the vendor shall be null and void, and such
145 tax overpayments shall be forfeited.

146 (g) Any assignment of the right or entitlement to a
147 refund or credit arising under this section shall be
148 subject to strict proof, and any assignee claiming a
149 right or entitlement to an assigned refund or credit
150 shall submit an affidavit in such form as the tax
151 commissioner shall prescribe signed by the assignor
152 acknowledging the assignment. The assignee shall
153 attest to the assignment and the terms thereof of his
154 signed application filed under subsection (e) of this
155 section for refund or credit, and will be subject to the
156 penalties provided under West Virginia law for per-
157 jury for any falsehood set forth therein and will be
158 subject to the penalties set forth in article nine of this
159 chapter for any violation thereof. Except as provided
160 in this subsection (h), no payment of a refund arising
161 under this section shall be made to any person other
162 than the taxpayer making the original overpayment of
163 consumers sales and service tax.

164 (h) No refund shall be due and no credit shall be
165 allowed unless the taxpayer or assignee shall have
166 filed a claim for refund or a claim for credit, as
167 appropriate, with the tax commissioner in accordance
168 with this section.

169 (i) Any claim for a refund of use tax overpayments
170 or a tax credit for use tax overpayments which is not
171 timely filed or not filed in proper form or in accor-
172 dance with the requirements of this section shall not
173 be construed to constitute a moral obligation of the
174 state of West Virginia for payment. No overpayment of
175 use tax made under this section shall be subject to
176 subsection (d), section seventeen, article ten of this
177 chapter, or paragraph (e)(1), section seventeen, article
178 ten of this chapter.

179 (j) The provisions of this section become effective
180 after the thirtieth day of June, one thousand nine
181 hundred eighty-seven.

§11-15A-3c. Delivery of a certificate of exemption in lieu of tax.

1 Persons having a right or claim under section three,
2 of this article, to any exemption set forth in subsec-
3 tions (a), (b), (c), (d), (f), (h), (i), (j), (m), (n), (o), (p),
4 (q), (r), (s), (t), (u), (w), (x), (y), (z), (aa), (cc), (dd), (ee),
5 (ff), (gg), (hh) and (ii), section nine, article fifteen of
6 this chapter shall, in lieu of paying the tax imposed by
7 this article, execute a certificate of exemption in such
8 form as the tax commissioner may require, and such
9 executed exemption certificate shall be delivered to
10 the vendor in such manner as the tax commissioner
11 may require: *Provided*, That the tax commissioner
12 may identify exemptions for which exemption certif-
13 icates are not required and as soon as practical may
14 specify by regulation exemptions for which exemption
15 certificates are not required.

§11-15A-6a. Collection by certain other retailers.

1 (a) *Duty to collect tax.* — For purposes of this article
2 and for collection of use tax required under section six
3 of this article, a retailer engaging in business in this
4 state also means and includes any of the following:

5 (1) Any retailer soliciting orders from persons
6 located in this state for the sale of tangible personal
7 property or taxable services by means of a telecom-
8 munication or television shopping system which
9 utilizes a telephone or mail ordering system, including
10 toll free telephone numbers, reverse charge telephone
11 systems or other telephone ordering systems and
12 which is intended by the retailer to be broadcast by
13 cable television or other means of broadcasting, to
14 consumers located in this state: *Provided*, That such
15 retailer has physical presence in this state in the form
16 of employees, offices, agents or sales outlets in this
17 state, or any other presence that provides the neces-
18 sary minimum contacts for a constitutionally sufficient
19 nexus for a state to require such a retailer collect and

20 remit use taxes.

21 (2) Any retailer who solicits orders from persons
22 located in this state for the sale of tangible personal
23 property or taxable services by means of advertising
24 that is broadcast from, printed at, or distributed from,
25 a location in this state if the advertising is primarily
26 intended to be disseminated to consumers located in
27 this state and is only secondarily or incidentally
28 disseminated to bordering jurisdictions. For purposes
29 of this paragraph, advertising which is broadcast from
30 a radio or television station located in this state or is
31 printed in or distributed by a newspaper published in
32 this state is rebuttably presumed to be primarily
33 intended for dissemination to consumers located in
34 this state: *Provided*, That such retailer has physical
35 presence in this state in the form of employees, offices,
36 agents or sales outlets in this state, or any other
37 presence that provides the necessary minimum con-
38 tacts for a constitutionally sufficient nexus for a state
39 to require such a retailer to collect and remit use
40 taxes.

41 (3) Any retailer soliciting orders from persons
42 located in this state for the sale of tangible personal
43 property or taxable services by mail if the solicitations
44 are substantial and recurring and if the retailer
45 economically benefits from any banking, financing,
46 debt collection, telecommunication or marketing
47 activities occurring in this state or economically
48 benefits from the location in this state of an authorized
49 installation, servicing or repair facility, regardless of
50 whether such facility is owned or operated by such
51 retailer or by a related or unrelated person: *Provided*,
52 That such retailer has physical presence in this state
53 in the form of employees, offices, agents or sales
54 outlets in this state, or any other presence that
55 provides the necessary minimum contacts for a consti-
56 tutionally sufficient nexus for a state to require such
57 a retailer to collect and remit use taxes.

58 (4) Any retailer having a franchisee or licensee
59 operating in this state under the retailer's trade name,
60 if the franchisee or licensee is required to collect the

61 tax imposed by this article or article fifteen of this
 62 chapter: *Provided*, That such retailer has physical
 63 presence in this state in the form of employees, offices,
 64 agents or sales outlets in this state, or any other
 65 presence that provides the necessary minimum con-
 66 tacts for a constitutionally sufficient nexus for a state
 67 to require such a retailer to collect and remit use
 68 taxes.

69 (5) Any retailer who, pursuant to a contract with a
 70 cable television operator located in this state, solicits
 71 from persons located in this state orders for the sale of
 72 tangible personal property or taxable services by
 73 means of advertising which is transmitted or distrib-
 74 uted over a cable television system in this state:
 75 *Provided*, That such retailer has physical presence in
 76 this state in the form of employees, offices, agents or
 77 sales outlets in this state, or any other presence that
 78 provides the necessary minimum contacts for a consti-
 79 tutionally sufficient nexus for a state to require such
 80 a retailer to collect and remit use taxes.

81 (b) *Exemption from payment of business registration*
 82 *tax.* — Any retailer required to collect use tax under
 83 the provisions of subsection (a) of this section shall be
 84 required to obtain a business registration certificate, as
 85 provided in article twelve of this chapter, but shall be
 86 exempt from payment of the tax levied by subsection
 87 (b), section three of said article twelve, unless the
 88 retailer has sufficient presence in this state so that
 89 required payment of the tax does not violate any
 90 provision of the constitution or laws of this state or of
 91 the United States.

92 (c) *Effective date.* — The provisions of this section
 93 shall become effective the first day of July, one
 94 thousand nine hundred eighty-nine, and apply to sales
 95 of tangible personal property or taxable services made
 96 on or after that date.

§11-15A-3d. Direct pay permits.

1 (a) Notwithstanding any other provision of this
 2 article, the tax commissioner may, pursuant to rules
 3 and regulations promulgated by him in accordance

4 with article three, chapter twenty-nine-a of this code,
5 authorize a person (as defined in section two of article
6 fifteen) that is a user, consumer, distributor or lessee
7 to which sales or leases of tangible personal property
8 are made or services provided to pay any tax levied by
9 this article or article fifteen of this chapter directly to
10 the tax commissioner and waive the collection of the
11 tax by that person's vendor. No such authority shall be
12 granted or exercised except upon application to the tax
13 commissioner and after issuance by the tax commis-
14 sioner of a direct pay permit. Upon issuance of such
15 direct pay permit, payment of the tax imposed or
16 assertion of the exemptions allowed by this article or
17 article fifteen of this chapter on sales and leases of
18 tangible personal property and sales of taxable services
19 from the vendors thereof shall be made directly to the
20 tax commissioner by the permit holder.

21 (b) On or before the fifteenth day of each month,
22 every permit holder shall make and file with the tax
23 commissioner a consumers sales and use tax direct pay
24 permit return for the preceding month in the form
25 prescribed by the tax commissioner showing the total
26 value of the tangible personal property so used, the
27 amount of taxable services purchased, the amount of
28 tax due from the permit holder, which amount shall
29 be paid to the tax commissioner with such return, and
30 such other information as the tax commissioner deems
31 necessary: *Provided*, That if the amount of consumers
32 sales and use taxes due averages less than one hun-
33 dred dollars per month, the tax commissioner may
34 permit the filing of quarterly returns in lieu of
35 monthly returns and the amount of tax shown thereon
36 to be due shall be remitted on or before the fifteenth
37 day following the close of the calendar quarter; and if
38 the amount due averages less than fifty dollars per
39 calendar quarter, the tax commissioner may permit
40 the filing of an annual direct pay permit return and
41 the amount of tax shown thereon to be due shall be
42 remitted on or before the last day of January each
43 year. The tax commissioner, upon written request
44 filed by the permit holder before the due date of the
45 return, may grant a reasonable extension of time,

46 upon such terms as the tax commissioner may require,
47 for the making and filing of direct pay permit returns
48 and paying the tax due. Interest on such tax shall be
49 chargeable on every such extended payment at the
50 rate specified in section seventeen, article ten of this
51 chapter.

52 (c) A permit issued pursuant to this section shall
53 continue to be valid until expiration of the taxpayer's
54 registration year under article twelve of this chapter.
55 This permit shall automatically be renewed when the
56 taxpayer's business registration certificate is issued for
57 the next succeeding fiscal year, unless the permit is
58 surrendered by the holder or canceled for cause by the
59 tax commissioner.

60 (d) Persons who hold a direct payment permit which
61 has not been canceled shall not be required to pay the
62 tax to the vendor as otherwise provided in this article
63 or article fifteen of this chapter. Such persons shall
64 notify each vendor from whom tangible personal
65 property is purchased or leased or from whom services
66 are purchased of their direct payment permit number
67 and that the tax is being paid directly to the tax
68 commissioner. Upon receipt of such notice, such
69 vendor shall be absolved from all duties and liabilities
70 imposed by this chapter for the collection and remit-
71 tance of the tax with respect to sales, distributions,
72 leases or storage of tangible personal property and
73 sales of services to such permit holder. Vendors who
74 make sales upon which the tax is not collected by
75 reason of the provisions of this section shall maintain
76 records in such manner that the amount involved and
77 identity of each such purchaser may be ascertained.

78 (e) Upon the expiration, cancellation or surrender of
79 a direct payment permit, the provisions of this chap-
80 ter, without regard to this section, shall thereafter
81 apply to the person who previously held such permit,
82 and such person shall promptly so notify in writing
83 vendors from whom tangible personal property or
84 services are purchased of such cancellation or surren-
85 der. Upon receipt of such notice, the vendor shall be
86 subject to the provisions of this chapter, without

87 regard to this section, with respect to all sales of
88 tangible personal property or taxable services, thereaf-
89 ter made to or for such person.

§11-15A-29. Effective date.

1 (a) The provisions of this article as amended or
2 added by Senate Bill No. 1 took effect on the first day
3 of March, one thousand nine hundred eighty-nine, and
4 apply to all purchases made or used in this state on or
5 after that date: *Provided*, That if an effective date was
6 expressly provided in a provision of such act, that
7 specific effective date controlled in lieu of this general
8 effective date provision.

9 (b) The provisions of this article as amended or
10 added by this act shall take effect on the first day of
11 July, one thousand nine hundred eighty-nine, and
12 apply to all purchases made or used in this state on or
13 after that date: *Provided*, That if an effective date is
14 expressly provided in such provision, that specific
15 effective date shall control in lieu of this general
16 effective date provision.

ARTICLE 21. PERSONAL INCOME TAX.

§11-21-12. West Virginia adjusted gross income of resident individual.

1 (a) *General.* — The West Virginia adjusted gross
2 income of a resident individual means his federal
3 adjusted gross income as defined in the laws of the
4 United States for the taxable year with the modifica-
5 tions specified in this section.

6 (b) *Modifications increasing federal adjusted gross*
7 *income.* — There shall be added to federal adjusted
8 gross income unless already included therein the
9 following items:

10 (1) Interest income on obligations of any state other
11 than this state, or of a political subdivision of any such
12 other state unless created by compact or agreement to
13 which this state is a party;

14 (2) Interest or dividend income on obligations or
15 securities of any authority, commission or instrumen-

16 tality of the United States, which the laws of the
17 United States exempt from federal income tax but not
18 from state income taxes;

19 (3) Income taxes imposed by this state or any other
20 taxing jurisdiction, to the extent deductible in deter-
21 mining federal adjusted gross income and not credited
22 against federal income tax: *Provided*, That this modi-
23 fication shall not be made for taxable years beginning
24 after the thirty-first day of December, one thousand
25 nine hundred eighty-six;

26 (4) Interest on indebtedness incurred or continued to
27 purchase or carry obligations or securities the income
28 from which is exempt from tax under this article, to
29 the extent deductible in determining federal adjusted
30 gross income;

31 (5) Interest on a depository institution tax-exempt
32 savings certificate which is allowed as an exclusion
33 from federal gross income under section 128 of the
34 Internal Revenue Code, for the federal taxable year;

35 (6) The amount allowed as a deduction from federal
36 gross income under section 221 of the Internal Reve-
37 nue Code by married couples who file a joint federal
38 return for the federal taxable year: *Provided*, That this
39 modification shall not be made for taxable years
40 beginning after the thirty-first day of December, one
41 thousand nine hundred eighty-six; ~~and~~

42 (7) The deferral value of certain income that is not
43 recognized for federal tax purposes, which value shall
44 be an amount equal to a percentage of the amount
45 allowed as a deduction in determining federal adjusted
46 gross income pursuant to the accelerated cost recovery
47 system under section 168 of the Internal Revenue
48 Code for the federal taxable year, with the percentage
49 of the federal deduction to be added as follows with
50 respect to the following recovery property: Three-year
51 property — no modification; five-year property — ten
52 percent; ten-year property — fifteen percent; fifteen-
53 year public utility property — twenty-five percent;
54 and fifteen-year real property — thirty-five percent:
55 *Provided*, That this modification shall not apply to any

56 person whose federal deduction is determined by the
57 use of the straight line method: *Provided, however,*
58 That this modification shall not be made for taxable
59 years beginning after the thirty-first day of December,
60 one thousand nine hundred eighty-six; *and*

61 (8) The amount of a lump sum distribution for
62 which the taxpayer has elected under section 402(e) of
63 the Internal Revenue Code of 1986, as amended, to be
64 separately taxed for federal income tax purposes.

65 (c) *Modifications reducing federal adjusted gross*
66 *income.* — There shall be subtracted from federal
67 adjusted gross income to the extent included therein:

68 (1) Interest income on obligations of the United
69 States and its possessions to the extent includible in
70 gross income for federal income tax purposes;

71 (2) Interest or dividend income on obligations or
72 securities of any authority, commission or instrumen-
73 tality of the United States or of the state of West
74 Virginia to the extent includible in gross income for
75 federal income tax purposes but exempt from state
76 income taxes under the laws of the United States or of
77 the state of West Virginia, including federal interest or
78 dividends paid to shareholders of a regulated invest-
79 ment company, under section 852 of the Internal
80 Revenue Code for taxable years ending after the
81 thirtieth day of June, one thousand nine hundred
82 eighty-seven;

83 (3) Any gain from the sale or other disposition of
84 property having a higher fair market value on the first
85 day of January, one thousand nine hundred sixty-one,
86 than the adjusted basis at said date for federal income
87 tax purposes: *Provided,* That the amount of this
88 adjustment is limited to that portion of any such gain
89 which does not exceed the difference between such
90 fair market value and such adjusted basis: *Provided,*
91 *however,* That if such gain is considered a long-term
92 capital gain for federal income tax purposes, the
93 modification shall be limited to forty percent of such
94 portion of the gain: *Provided further,* That this
95 modification shall not be made for taxable years

96 beginning after the thirty-first day of December, one
97 thousand nine hundred eighty-six;

98 (4) The amount of any refund or credit for overpay-
99 ment of income taxes imposed by this state, or any
100 other taxing jurisdiction, to the extent properly
101 included in gross income for federal income tax
102 purposes;

103 (5) Annuities, retirement allowances, returns of
104 contributions and any other benefit received under
105 the West Virginia public employees retirement system,
106 the West Virginia state teachers retirement system
107 and all forms of military retirement, including regular
108 armed forces, reserves and national guard, including
109 any survivorship annuities derived therefrom, to the
110 extent includible in gross income for federal income
111 tax purposes: *Provided*, That notwithstanding any
112 provisions in this code to the contrary this modifica-
113 tion shall be limited to the first two thousand dollars
114 of benefits received under the West Virginia public
115 employees retirement system, the West Virginia state
116 teachers retirement system and all forms of military
117 retirement including regular armed forces, reserves
118 and national guard, including any survivorship annui-
119 ties derived therefrom, to the extent includible in
120 gross income for federal income tax purposes for
121 taxable years beginning after the thirty-first day of
122 December, one thousand nine hundred eighty-six; and
123 the first two thousand dollars of benefits received
124 under any federal retirement system to which Title 4
125 USC § 111 applies: *Provided, however*, That the total
126 modification under this paragraph shall not exceed
127 two thousand dollars per person receiving such retire-
128 ment benefits and this limitation shall apply to all
129 returns or amended returns filed after the last day of
130 December, one thousand nine hundred eight-eight;

131 (6) Retirement income received in the form of
132 pensions and annuities after the thirty-first day of
133 December, one thousand nine hundred seventy-nine,
134 under any West Virginia police, West Virginia fire-
135 men's retirement system or the West Virginia depart-
136 ment of public safety death, disability and retirement

137 fund, including any survivorship annuities derived
138 therefrom, to the extent includible in gross income for
139 federal income tax purposes;

140 (7) Federal adjusted gross income in the amount of
141 eight thousand dollars received from any source after
142 the thirty-first day of December, one thousand nine
143 hundred eighty-six, by any person who has attained
144 the age of sixty-five on or before the last day of the
145 taxable year, or by any person certified by proper
146 authority as permanently and totally disabled, regard-
147 less of age, on or before the last day of the taxable
148 year, to the extent includible in federal adjusted gross
149 income for federal tax purposes: *Provided*, That if a
150 person has a medical certification from a prior year
151 and he is still permanently and totally disabled, a copy
152 of the original certificate is acceptable as proof of
153 disability. A copy of the form filed for the federal
154 disability income tax exclusion is acceptable: *Provided*,
155 *however*, That

156 (i) Where the total modification under subdivisions
157 (1), (2), (5) and (6) of this subsection is eight thousand
158 dollars per person or more, no deduction shall be
159 allowed under this subdivision; and

160 (ii) Where the total modification under subdivisions
161 (1), (2), (5) and (6) of this subsection is less than eight
162 thousand dollars per person, the total modification
163 allowed under this subdivision for all gross income
164 received by such person shall be limited to the
165 difference between eight thousand dollars and the sum
166 of modifications under such subdivisions;

167 (8) Federal adjusted gross income in the amount of
168 eight thousand dollars received from any source after
169 the thirty-first day of December, one thousand nine
170 hundred eighty-six, by the surviving spouse of any
171 person who had attained the age of sixty-five or who
172 had been certified as permanently and totally disabled,
173 to the extent includible in federal adjusted gross
174 income for federal tax purposes: *Provided*, That

175 (i) Where the total modification under subdivisions
176 (1), (2), (5), (6) and (7) of this subsection is eight

177 thousand dollars or more, no deduction shall be
178 allowed under this subdivision; and

179 (ii) Where the total modification under subdivisions
180 (1), (2), (5), (6) and (7) of this subsection is less than
181 eight thousand dollars per person, the total modifica-
182 tion allowed under this subdivision for all gross
183 income received by such person shall be limited to the
184 difference between eight thousand dollars and the sum
185 of such subdivisions;

186 (9) Any pay or allowances received, after the thirty-
187 first day of December, one thousand nine hundred
188 seventy-nine, by West Virginia residents who have not
189 attained the age of sixty-five, as compensation for
190 active service in the armed forces of the United States:
191 *Provided*, That such deduction shall be limited to an
192 amount not to exceed four thousand dollars: *Provided*,
193 *however*, That this modification shall not be made for
194 taxable years beginning after the thirty-first day of
195 December, one thousand nine hundred eighty-six;

196 (10) Gross income to the extent included in federal
197 adjusted gross income under section 86 of the Internal
198 Revenue Code for federal income tax purposes: *Pro-*
199 *vided*, That this modification shall not be made for
200 taxable years beginning after the thirty-first day of
201 December, one thousand nine hundred eighty-six;

202 (11) The amount of any lottery prize awarded by the
203 West Virginia state lottery commission, to the extent
204 properly included in gross income for federal income
205 tax purposes; and

206 (12) Any other income which this state is prohibited
207 from taxing under the laws of the United States.

208 (d) *Modification for West Virginia fiduciary adjust-*
209 *ment.* — There shall be added to or subtracted from
210 federal adjusted gross income, as the case may be, the
211 taxpayer's share, as beneficiary of an estate or trust, of
212 the West Virginia fiduciary adjustment determined
213 under section nineteen of this article.

214 (e) *Partners and S corporation shareholders.* — The
215 amounts of modifications required to be made under

216 this section by a partner or an S corporation share-
217 holder, which relate to items of income, gain, loss or
218 deduction of a partnership or an S corporation, shall
219 be determined under section seventeen of this article.

220 (f) *Husband and wife.* — If husband and wife
221 determine their federal income tax on a joint return
222 but determine their West Virginia income taxes
223 separately, they shall determine their West Virginia
224 adjusted gross incomes separately as if their federal
225 adjusted gross incomes had been determined
226 separately.

ARTICLE 24. CORPORATION NET INCOME TAX.

§11-24-9c. Research and development credit against primary tax.

1 A credit shall be allowed against the primary tax
2 imposed by this article, which shall be the research
3 and development credit as provided in sections three
4 and three-b, article thirteen-d of this chapter for
5 taxable years beginning after the thirty-first day of
6 December, one thousand nine hundred eighty-eight:
7 *Provided,* That the amount of this credit may not
8 reduce by more than fifty percent of the amount of
9 the net tax liability of the taxpayer for the taxable
10 year: *Provided, however,* That one-tenth of the entire
11 amount of the eligible investment, upon which the
12 credit is predicated pursuant to sections three and
13 three-b, article thirteen-d of this chapter, taken as a
14 deduction in determining its federal taxable income
15 for the taxable year shall be an adjustment increasing
16 federal taxable income under section six of this article:
17 *Provided further,* That the taxpayer may at its option
18 elect in lieu of claiming the credit allowable by this
19 section to not increase its federal taxable income
20 under section six of this article and thereby take as a
21 full deduction under this article for the taxable year
22 the amount of its eligible investment in research and
23 development for the taxable year, which was taken as
24 a deduction on its federal return for such taxable year.

CHAPTER 17. ROADS AND HIGHWAYS.

ARTICLE 6. DEFINITIONS.

§17-1-3. "Road"; "public road"; "highway."

1 The words or terms "road," "public road," or
2 "highway" shall be deemed to include, but shall not be
3 limited to, the right of way, roadbed and all necessary
4 culverts, sluices, drains, ditches, waterways, embank-
5 ments, slopes, retaining walls, bridges, tunnels and
6 viaducts necessary for the maintenance of travel,
7 dispatch of freight and communication between indi-
8 viduals and communities; and such public road or
9 highway shall be taken to include any road to which
10 the public has access and which it is not denied the
11 right to use, or any road or way leading from any
12 other public road over the land of another person, and
13 which shall have been established pursuant to law.
14 Any road shall be conclusively presumed to have been
15 established when it has been used by the public for a
16 period of ten years or more, and public moneys or
17 labor have been expended thereon, whether there be
18 any record of its conveyance, dedication or appropria-
19 tion to public use or not. In the absence of any other
20 mark or record, the center of the traveled way shall be
21 taken as the center of the road and the right of way
22 shall be designated therefrom an equal distance on
23 each side, but a road may be constructed on any part
24 of the located right of way when it is deemed advis-
25 able so to do.

26 The Legislature notes that there are public highways
27 that run over the surface of this land, over and
28 through the navigable streams, rivers and waterways
29 on this earth and above the surface of this earth in the
30 form of highways in the sky, commonly known as
31 airways. The Legislature finds that each of these types
32 of public highways are essential to the development of
33 this state and that the health and safety of each of the
34 citizens of this state are affected daily by the availabil-
35 ity of each of these three types of public highways, and
36 that it is the best interests of the people of this state
37 that each of these be recognized and included within

38 the meaning of public highways. The Legislature
39 further recognizes that airports are an important and
40 integral part of the public highways existing above the
41 surface of this state, and that airports are necessary to
42 access such highways, and therefore airports, includ-
43 ing runways, taxiways, parking ramps, access roads
44 and air traffic control facilities located at airports, are
45 hereby declared to be part of the public highway
46 system of this state.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Fredrick L. Purn
.....
Chairman Senate Committee

Bernard V. Kelly
.....
Chairman House Committee

Originated in the Senate.

In effect from passage.

Joad C. Smith
.....
Clerk of the Senate

Donald H. Kopp
.....
Clerk of the House of Delegates

Sam R. Tucker
.....
President of the Senate

Bob Stall
.....
Speaker House of Delegates

The within *is approved* this *27th*
day of *April* 1989.

Gaston Caperton
.....
Governor

PRESENTED TO THE

GOVERNOR

Date

4/20/89

Time

10:37